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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

BS

FILE:

Office: NEBRASKA SERVICE CENTER

Date: **DEC 20 2010**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mari Rhew

2 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO then dismissed a motion to reopen and reconsider because it did not meet the requirements of a motion at the time it was filed. The matter is now before the AAO on a second motion to reopen or reconsider. The motion will be dismissed.

The AAO dismissed the appeal on March 6, 2009. On April 7, 2009, U.S. Citizenship and Immigration Services (USCIS) received a Form I-290B and fee from the petitioner stating that the filing constituted his motion to reopen and reconsider. The petitioner asserted that he would send a brief and/or additional evidence to the AAO within 30 days.

On November 9, 2009, the AAO dismissed the motion on two grounds: first, that the motion did not meet the requirements of a motion when filed and second because no additional evidence was submitted.

On motion, the petitioner asserts that within 14 days of filing the motion, he submitted additional evidence. As stated in our previous decision, however, the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion. Moreover, the petitioner did not submit new evidence to address the AAO's grounds for dismissing the motion, such as a postal receipt.

Even if we adjudicated the motion on its merits and, thus, considered the new materials that were purportedly submitted within 14 days of the previous motion, they all relate to accomplishments that postdate the filing of the petition. The petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971); *see also* *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Thus, the new evidence is not persuasive.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

The petitioner has not filed a proper motion to reopen or reconsider. His request was not accompanied by any new facts or evidence relating to the grounds for dismissing the previous motion or arguments based on precedent decisions.

ORDER: The motion is dismissed.